

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY E. BISHOP and U.S. POSTAL SERVICE,  
POST OFFICE, Harrisburg, IL

*Docket No. 98-2246; Submitted on the Record;  
Issued August 1, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained greater than a seven percent permanent impairment of the right leg for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied his request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that appellant sustained no greater than a seven percent permanent impairment of the right leg for which he received a schedule award and that the Office did not abuse its discretion in denying appellant's request for reconsideration.

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,<sup>2</sup> including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.<sup>3</sup>

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>4</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> 5 U.S.C. § 8107(a).

(hereinafter, the A.M.A., *Guides*) as a standard for evaluating schedule losses and the Board has concurred in such adoption.<sup>5</sup>

On October 10, 1995 appellant, then a 58-year-old letter carrier, sustained a lumbar strain and a torn right knee medial meniscus in the performance of duty. On March 27, 1997 appellant filed a claim for a schedule award. By decision dated February 12, 1998, the Office granted appellant a schedule award for 20.16 weeks based upon a 7 percent permanent impairment of the right leg.

With regard to the medical evidence, by letter dated May 7, 1997, the Office asked Dr. Ahmet K. Percinel, appellant's attending orthopedic surgeon, to provide an opinion as to appellant's permanent impairment of the right knee based upon the A.M.A., *Guides*.

In clinical notes dated May 19, 1997, Dr. Percinel related that appellant had undergone surgery to repair a bucket handle tear of the right knee medial meniscus with peripheral cleavage tear, Grade III chondromalacia patellae. He related appellant's complaint that his knee occasionally hurt and he could not kneel on it and occasionally had swelling but otherwise his condition was improved following his surgery. Dr. Percinel stated that appellant had full extension of the right knee and almost full flexion of the right knee, very minimal patellofemoral crepitation, negative McMurray's test, no ligamentous laxity. He stated his opinion that appellant had a 10 percent permanent impairment of the right lower extremity but he did not explain how he arrived at this determination of impairment.

In a memorandum dated November 10, 1997, Dr. David H. Garelick, an orthopedic surgeon and an Office medical consultant, related that he had reviewed Dr. Percinel's reports, which noted that appellant had returned to work but had some intermittent knee pain, which was exacerbated with activity. He noted Dr. Percinel's findings that appellant had full flexion and extension of the knee and very minimal patellofemoral crepitation. Dr. Garelick stated that appellant had a five percent permanent impairment according to Table 62 at page 83 of the fourth edition of the A.M.A., *Guides*. He further stated that appellant had a two percent permanent impairment due to a partial medial meniscectomy according to Table 64 at page 85 of the A.M.A., *Guides* and that appellant's total permanent impairment of the right leg was seven percent based upon the Combined Values Chart on page 322.

The Board finds that, as the report of Dr. Garelick provided the only evaluation of record, which conformed with the A.M.A., *Guides*, it constitutes the weight of the medical evidence.<sup>6</sup> Therefore, the Office properly determined that appellant had a seven percent permanent impairment of the right leg.

The opinion of Dr. Percinel is of limited probative value in that Dr. Percinel failed to provide an explanation of how his assessment of permanent impairment was derived in

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<sup>5</sup> *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

<sup>6</sup> *See Bobby L. Jackson*, 40 ECAB 593, 601 (1989).

accordance with the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses.<sup>7</sup>

By letter dated March 1, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated April 14, 1998, the Office denied appellant's request for further merit review.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by:

“(1) showing that the Office erroneously applied or interpreted a point of law; or

“(2) advancing a point of law or a fact not previously considered by the Office; or

“(3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>8</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>9</sup>”

In support of his March 1, 1998 request for reconsideration, appellant submitted a letter dated March 9, 1998, from Dr. Percinel, who reiterated his opinion that appellant had a 10 percent permanent impairment of the right lower extremity. However, Dr. Percinel did not explain, with reference to the A.M.A., *Guides*, how he arrived at his determination of appellant's permanent impairment. Therefore, this letter does not constitute new and relevant evidence not previously considered by the Office and the Office properly denied appellant's request for reconsideration.

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<sup>7</sup> See *James Kennedy, Jr.*, *supra* note 5 (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

<sup>8</sup> 20 C.F.R. § 10.138(b)(1).

<sup>9</sup> 20 C.F.R. § 10.138(b)(2).

The decisions of the Office of Workers' Compensation Programs dated April 14 and February 12, 1998 are affirmed.

Dated, Washington, D.C.  
August 1, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member